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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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R2203016

Order Instituting Rulemaking
Proceeding to Consider Amendments
to General Order 133.

Rulemaking 22-03-016

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling (Scoping Memo) sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules or Rule).

1. Procedural Background

In response to Petition 21-10-003, the California Public Utilities Commission (Commission) adopted on March 17, 2022, an Order Instituting Rulemaking proceeding (OIR or proceeding) to consider proposed amendments to the Commission's General Order (GO) 133. GO 133 sets minimum service quality standards for telecommunications services and includes an enforcement mechanism. The Commission last revised GO 133 (now GO 133-D) in Decision (D.) 16-08-021.

A prehearing conference (PHC) was held on June 1, 2022, to discuss the issues of law and fact and determine the need for hearing and schedule for resolving the matter. After considering the comments and reply comments filed in response to the OIR, as well as the discussion at the PHC, I have determined the issues and schedule of the proceeding to be as set forth in this Scoping Memo.

2. Issues

The Commission opened this OIR to assess whether the existing GO 133-D service quality standards and measures meet the Commission's mandates and goals, and remain relevant to the current regulatory environment and market for telecommunications services, including consideration of service quality standards applicable to Voice over Internet Protocol (VoIP), wireless, and broadband Internet service. Additionally, the Commission will consider whether the existing enforcement framework in GO 133-D is adequate to improve substandard voice communications service. In considering service quality for broadband Internet service, the Commission may also consider additional enforcement mechanisms. This proceeding will be divided into two phases, as described below.

Throughout the proceeding, the Commission will also consider impacts on environmental and social justice communities, including improvements to better achieve any of the nine goals of the Commission's Environmental and Social Justice Action Plan.¹ Additionally, in the regular course of any proceeding, the Commission examines its impact on public safety. Public safety will be a consistent theme in this proceeding, given the potential and significant risks to public safety caused by outages and degraded service, including access during emergencies.

2.1. Phase 1

Phase 1 of this proceeding will address the following issues:

1. Are there any existing service quality metrics that should be extended to wireless and interconnected VoIP services?

¹ More information on the Commission's Environmental and Social Justice Action Plan available on the Commission's website at: <https://www.cpuc.ca.gov/ESJactionplan/>

- Should specific metrics apply to one type of technology or service and not the other?
2. Should the Commission modify any of the existing service quality metrics and standards or develop new service quality standards and reporting requirements applicable to wireless and interconnected VoIP services? Are there specific metrics that should apply to one type of technology and not others? Are there reporting requirements or metrics that the Commission should no longer mandate?
 3. Does GO 133-D's enforcement framework and penalty mechanism serve the public interest in ensuring adequate and appropriate investments in the state's telecommunications infrastructure? If not, how should the Commission modify GO 133-D to achieve this outcome in a more effective manner?
 - a) Should the enforcement framework and penalty mechanism continue to determine the out of service repair interval fine using adjusted results? Should the out of service repair interval fine only be determined using unadjusted results?
 - b) Should the Commission revise the out of service repair interval measurement, reporting mechanism, enforcement framework, and penalty mechanism to eliminate the currently permitted exclusions including, Sundays, federal holidays and certain repair tickets, as listed in GO 133-D Section 3.4 (b)?

2.2. Phase 2

Phase 2 of this proceeding will address the following issues:

1. Should the Commission adopt service quality metrics and standards and reporting requirements applicable to broadband Internet service?
2. If yes, what specific service quality metrics and standards, reporting requirements, and enforcement framework should the Commission adopt?

3. Need for Evidentiary Hearing

At the PHC, several parties requested the opportunity to submit a motion for evidentiary hearing after issuance of the Scoping Memo. Parties have until 15 days after reply comments on the staff proposal are filed and served to file motions requesting evidentiary hearings and must support those motions with specific material disputed facts. These motions shall also contain requests for briefing, if any, along with an explanation of what issues the parties believe are appropriate for briefing and why. Parties may file a motion requesting briefing if they believe briefing on legal issues are needed regardless of their position on whether evidentiary hearings are needed.

4. Public Participation Hearings

Public participation hearings provide an opportunity for individuals who are not parties to a proceeding to place their views on the record of the proceeding. As such, parties should anticipate at least two public participation hearings for this proceeding. The Commission may consider public sentiments and concerns as guidance in the development of a more formal record.

5. Schedule

The following schedule is adopted here and may be modified by the Administrative Law Judge (ALJ) or the assigned Commissioner as required to promote the efficient and fair resolution of the Rulemaking.

PHASE 1 ACTIVITY	PHASE 1 DATE
ALJ ruling(s) requesting comments on the Network Exam and other items	Summer 2022
Opening comments	TBD
Reply Comments	TBD
Public Participation Hearing(s)	Fourth Quarter 2022
Staff Proposal Served	First Quarter 2023
Workshop on Staff Proposal	First Quarter 2023

Public Participation Hearing	Second Quarter 2023
Opening Comments on Staff Proposal	TBD
Reply Comments on Staff Proposal (Record stands submitted)	TBD
Motions requesting Evidentiary Hearings and/or Briefing	No later than 15 days after reply comments filed
Evidentiary hearings and/or Briefs, if determined needed	TBD
Opening briefs, if needed	TBD
Reply briefs, if needed	TBD
Proposed decision	No later than 90 days after submission
Commission decision	No sooner than 30 days after the proposed decision
PHASE 2 ACTIVITY	PHASE 2 DATE
Phase 2	TBD

Although certain parties, including Verizon,² the California Cable and Telecommunications Association,³ and Frontier,⁴ among others, request that this proceeding begin with legal briefs, as part of an effort to determine “if” the Commission has jurisdiction over wireless, VoIP, and broadband Internet services, I do not find it necessary to delay action in Phase 1 to settle this matter, given that the Commission previously has found it has jurisdiction to adopt certain types of regulations over wireless and VoIP services. The preemption in 47 U.S. Code § 332 (c)(3) applies to rates and market entry, not conditions.⁵

² See PHC Transcripts, 33:2-7.

³ *Id* 36:7-21

⁴ *Id* 41:21-42:4

⁵ 47 U.S. Code § 332 (c)(3) (A) reads, in part:

Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial

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Additionally, the Commission found that VoIP carriers are telephone corporations and are therefore public utilities under its jurisdiction.⁶ Further the Commission is not bound by the 8th Circuit's decision, *Minnesota Pub. Util. Comm'n v. FCC*,⁷ one legal precedent parties raise to support their argument that the Commission is preempted from regulating VoIP services.⁸ Finally, it is not necessary to brief the issue of the Commission's jurisdiction over broadband Internet service to move forward with Phase 1. To the extent there are issues parties assert would require briefing they may file a motion consistent with the proceeding schedule.

To assist in developing the record on the issues in scope in greater detail, the assigned ALJ will issue a ruling requesting parties to comment on items such as the conclusions and recommendations made in the Network Exam ordered in D.13-02-023, and D.15-08-041,^{9 10} proposals made by other parties, and data on

mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

⁶ See D.19-08-025 at COL 27: "VoIP carriers clearly fit within the plain language of the definition of a public utility 'telephone corporation.'" (See also D.21-02-029 at-10-11).

⁷ D.20-09-012 at 24.

⁸ See the California Cable and Telecommunications Association, *Opening Comments*, filed May 9, 2022, at 18. See also, the Small LECs, *Opening Comments*, filed May 9, 2022, at 4.

⁹ See Examination of the Local Telecommunications Networks and Related Policies and Practices of AT&T California and Frontier California, Study conducted pursuant to the California PUC Service Quality Rulemaking (R.) 11-12-001, D.13-02-023, and D.15-08-041, April 2019 (Phase 1 report). A public version of the Phase 1 report is available, as of this writing, at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/service-quality-and-etc/network-exam-of-att-and-frontier-verizon>. See Network Exam Phase 1 Report, Chapter 1 Executive Summary at 2-3.

¹⁰ This includes more than recommendations directly related to GO 133-D, as the 2019 Network Exam Report recommended that ILECS maintain their Part 32 Uniform System of

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network outages collected by Staff. These comments and reply comments on the rulings, as well as information collected at the scheduled public participation hearings will inform the anticipated Staff Proposal.

For each phase of this proceeding, the proceeding will stand submitted as indicated in the schedule, unless the assigned ALJ or Commissioner requires further evidence or argument. Due to the complexity and number of issues in this proceeding, it is the Commission's intent to complete this proceeding within 24 months from the date this scoping memo is issued. (Pub. Util. Code § 1701.5(b).).

6. Status of Small LECs and Southern California Edison

At the PHC and in filings, the Small LECs¹¹ and Southern California Edison (SCE) request adjustments to their status in this proceeding. The Small LECs request to be exempt from new service quality rules.¹² SCE requests to be excluded from the proceeding.¹³ In the case of the Small LECs, I find it is premature to grant the request, as it seems reasonable to presume that this proceeding will consider whether to maintain existing exemptions for the Small LECs or consider new ones for other telecommunications services the Small LECs

Accounts (USOA) regulatory accounting records and submit annual Automatic Reporting Management Information System (ARMIS) type financial reports. Note that in R.05-04-005, AT&T has petitioned the Commission to relieve it of the obligation to produce (ARMIS) Reports 43-01, 43-02, and 43-03, required by D.08-09-015.

¹¹ The Small LECs consist of following 13 small Local Exchange Carriers: Kerman Telephone Co., Foresthill Telephone Co., Hornitos Telephone Company, Pinnacles Telephone Co., Volcano Telephone Company, Winterhaven Telephone Company, Happy Valley Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, The Ponderosa Telephone Co., Calaveras Telephone Company, Cal-Ore Telephone Co., and Ducor Telephone Company.

¹² The Small LECs, *Opening Comments*, filed May 9, 2022 at 1. *Prehearing Conference Transcripts*, 77:19-79:12.

¹³ See SCE Company, *Motion for Clarification*, filed June 8, 2022.

offer, and the full participation of these companies is a necessary component of that discussion, both in terms of standard filings, but also in answering data requests from Commission Staff and participating in the discovery process. In the case of SCE, it also is premature to grant its request. An underlying presumption of SCE's request is that this proceeding will focus solely on voice services. As indicated in Section 2 of this ruling, that is not the case. Further, given the early stage of this proceeding, it is not clear if this proceeding will include consideration of rules that may or may not apply to SCE.

7. Protective Order

Several parties at the PHC requested the Commission adopt a protective order as a way to expedite the discovery process.¹⁴ I am not convinced there is a need for a protective order at this time. In D.20-12-021, the Commission extensively analyzed provider confidentiality claims regarding information that likely will be part of the discovery process in this proceeding, including raw customer trouble reports, other customer complaint information, out-of-service repair interval data, aggregated reports of this information, as well as other related service quality information or data. In many cases, the Commission found in D.20-12-021 that this information does not meet the thresholds to be considered a privileged trade secret, critical infrastructure information under the Critical Infrastructure Information Act of 2002, nor was withholding this information and data warranted after conducting a "balancing test" under Gov. Code § 6255(a). Parties should rely on this existing Commission analysis when requesting confidential treatment or disclosure.

¹⁴ See comments of Sonic Telecom at PHC, *Prehearing Conference Transcripts*, 104:09-105:18. See also, comments of Joint Respondents, 106:06-11.

As a reminder, GO 66-D § 3 sets forth the requirements for submission of information to the Commission under a claim of confidentiality. Pursuant to GO 66-D § 3.2, the party filing the information bears the burden of proving the reasons why the Commission shall withhold any information from the public and a request for confidential treatment must satisfy several requirements, as explained in more detail in those rules.

8. Category of Proceeding/ Ex Parte Restrictions

This ruling confirms the Commission's preliminary determinations that this is a quasi-legislative proceeding. Accordingly, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules.

9. Public Outreach

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

The Commission's Public Advisor's Office also conducted outreach to teachers' unions, school districts, libraries, safety organizations (the California Governor's Office of Emergency Services, Office of Energy Infrastructure Safety, California Department of Forestry and Fire Protection, local fire and public safety departments), local governments, and tribes following adoption of the OIR and prior to a PHC.

10. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by July 1, 2022, 30 days after the PHC.

11. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. *See* Pub. Util. Code § 1701.1(g). Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the docket card for the proceeding.

12. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 1-866-849-8390 or 1-415-703-2074 or 1-866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

13. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

14. Assignment of Proceeding

Darcie L. Houck is the assigned commissioner and Thomas J. Glegola is the assigned ALJ for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. The category of the proceeding is quasi-legislative.

Dated July 22, 2022, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck
Assigned Commissioner